

# Supreme Court of the United States

October Term, 1934

MARJORIE HATT BOWEN, Plaintiff,  
administratrix of the estate of  
deceased,

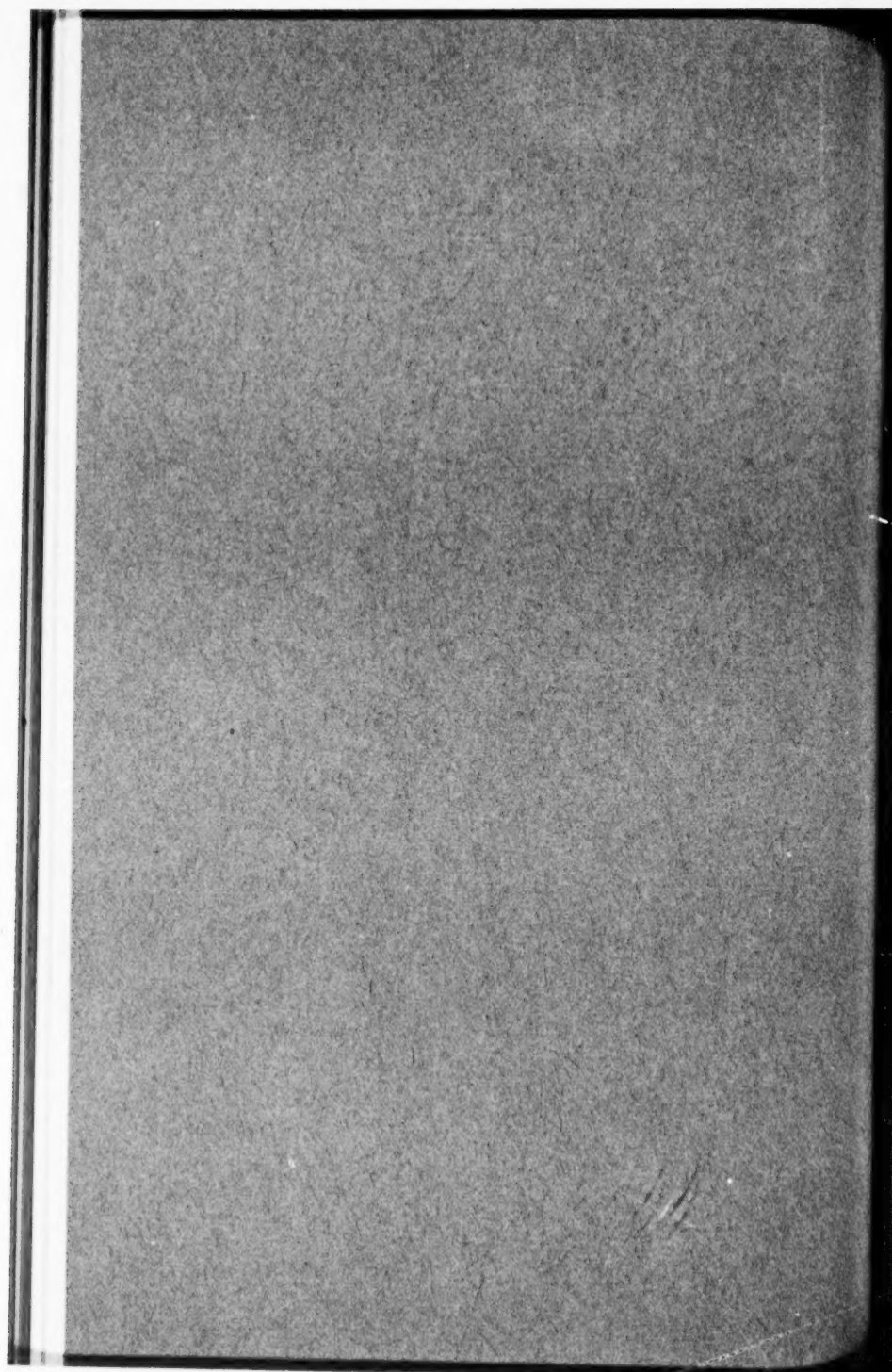
FREEMAN COAL MINING CORPORATION, a corporation,  
WILLIAM J. KNIGHT and MARTHA  
SERVICE CORPORATION, a corporation,

REPLY BRIEF OF DEFENDANTS

JOHN J. BOWEN,

Attorney for Plaintiff,

CHARLES H. BORDEN,  
Of Counsel.



IN THE

# Supreme Court of the United States

OCTOBER TERM, A. D. 1944

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**No. 1147**

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MARJORIE HAIR BURTON, individually and as  
administratrix of the estate of Frederic A. Burton,  
deceased,

*Petitioner,*

*vs.*

FREEMAN COAL MINING CORPORATION, a corpo-  
ration, WILLIAM J. KRUGLY and MATERIAL  
SERVICE CORPORATION, a corporation,

*Respondents.*

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## REPLY BRIEF OF PETITIONER

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The federal question presented by the petition is primarily the construction of subparagraph 13 of Section 216 of the Bankruptcy Act.

The Plan of Reorganization of the Burton Coal Company did not deal with a claim against petitioner. Such a claim is not mentioned anywhere in the proceedings to reorganize the Burton Coal Company. If a claim against petitioner ever existed then the mandatory provision of

subparagraph 13 of Section 216 of the Bankruptcy Act required that the plan provide for the retention and enforcement of such claim by the Trustee. Subparagraph 13 of Section 216 limits the enforcement of such claims solely to the trustee who under Chapter X of the Bankruptcy Act is required to be a disinterested trustee. Section 216 conjoined with subparagraph 3 of Section 167 of the Bankruptcy Act was intended to preclude the possibility of what occurred in this case.

J. Roy Browning, the Trustee in the proceedings to reorganize the Burton Coal Company, has never asserted a claim against petitioner.

On the contrary the Trustee Browning paid petitioner \$22,451.16 as royalties for the coal mined from petitioner's lands and leases. Said payments covered the entire period of Browning's trusteeship up to the date of the consummation of the Plan of Reorganization (R. 222, 223, Petition p. 3).

After the plan had been consummated (April 1, 1942, R. 217, 218) respondents brought this suit (June 24, 1942, R. 1) against petitioner alleging that a right of action existed in favor of the Burton Coal Company its stockholders and creditors and asking that the respondents, or one or more of them, be declared successors in interest to the said Burton Coal Company (R. 12, pars. (a) (b)). There is nothing in the record to show that the Trustee assigned such a right of action to the respondents or either of them. There is no order of the Bankruptcy Court authorizing the Trustee to make such an assignment. The Plan of Reorganization nowhere states that the debtor Burton Coal Company had such a right of action against petitioner. That these circumstances could give the Illinois state court jurisdiction of the estate of the debtor Burton Coal Company is inconceivable.

At the time the Trustee Browning effected the transfer of the debtor's property he became president of the transferee company, Freeman Coal Mining Corporation (R. 217, 218).

It is strange law that would permit respondent Freeman Coal Mining Corporation to appropriate petitioner's lands because the Federal Trustee ignored the statutory requirements of the Bankruptcy Act.

The respondents seek to confuse the issue here presented by misleading and fallacious statements.

At page 6 of the brief respondents say:

"Having been given exclusive jurisdiction over all the property and assets of the Burton Coal Company by the proceedings to reorganize, the bankruptcy court \* \* \* authorized and directed its trustee to convey out the lands in question together with all other tangible property of the Burton Coal Company to the Freeman Coal Mining Corporation. J. Roy Browning, Trustee, thus authorized and directed upon the consummation of the plan, parted with title and possession to the lands in question and placed both in the Freeman Coal Mining Corporation, this plaintiff-respondent."

There is no page reference to the printed record for this statement for the reason the record repudiates the notion. If Browning, the Trustee, had title to the land and conveyed it to Respondent Freeman Coal Mining Corporation, there would be no necessity or reason for this suit. The recklessness of Respondents' statement is made manifest by their own description of the nature of the suit. Respondents say at page 1 of their brief:

"This is an action brought by respondents in the Circuit Court of Cook County, Illinois, as plaintiffs in equity to impress a trust in favor of the Freeman Coal Mining Corporation, one of the respondents, on

the lands described in the complaint title to which was alleged to be in the name of Fred A. Burton, one of the petitioners (Rec. 27)."

At page 8 of their brief Respondents say:

"The suit instituted by respondents was no interference with an estate in bankruptcy in the course of administration."

If a cause of action was available to the estate of the Burton Coal Company, as the Respondents claim, then the suit instituted by Respondents in the Illinois state court was an interference with the administration of an estate by the Bankruptcy Court. Sec. 216 (13) of the Bankruptcy Act.

In addition the Bankruptcy Court retained jurisdiction of the proceedings to reorganize the Burton Coal Company, as follows:

"(f) Generally to determine any and all matters pertaining to this proceeding or to the Plan and not determined heretofore or by this order, and to make from time to time such further or other order or orders as this Court may deem just and proper in the exercise of the jurisdiction and powers conferred upon it by Chapter X of the Bankruptcy Act" (R. 309, 310).

In fact, but *dehors* the record, the order confirming the Plan of Reorganization entered by the Judge of the Bankruptcy Court in said proceedings and now on file in the U. S. District Court clerk's office in Chicago, Illinois, contains an additional paragraph (g) which respondents inadvertently overlooked when they substituted a conformed copy of said order in lieu of the original order which was introduced upon the hearing before the Master. Said paragraph (g) reads as follows:

"(g) With respect to any assets or property title

to which still remains in the Trustee, to determine all questions and adjudicate the rights of all claimants with respect thereto and make such disposition or distribution thereof as the interests of all parties shall require and as shall appear proper."

It is signed by Charles E. Woodward, Judge, is dated March 27, 1942, and examined and approved by Victor E. LaRue, Special Master, March 26, 1942.

This case we believe presents a matter of compelling importance to the administration of the Bankruptcy laws.

Respectfully submitted,

JOHN J. DOWDLE,  
*Attorney for Petitioner.*

CHARLES H. BORDEN,  
*Of Counsel.*